IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4652 OF 1994

Smt.Sudhabai Narsingrao
Pupala and Others .. Petitioners.
Vs.
Vijay Narsingrao Pupala & Ors. .. Respondents.

Mr.S.M.Gorwadkar for the petitioners.
Ms.R.C.Nichani for respondent no.1.

CORAM : D.B.BHOSALE, J.

DATED : 7TH OCTOBER, 2006

P.C.:

. Heard learned counsel for the petitioner and respondent no.1.

2. Mr.Gorwadkar, learned counsel for the petitioners, on instructions from his client, who is present in the court prays for withdrawal of this petition with liberty to the petitioner to file an application seeking amendment under Order 6 Rule 17 afresh after the issue as reflected in paragraph 8 of the impugned order is decided by the Small Causes Court. The issue reads thus:

> "Whether plaintiff no.2 proves that he had taken possession of the suit premises from the defendants for himself and on behalf of other plaintiffs and that the suit has become infructuous as alleged ?"

3. Mr.Gorwadkar submits that in the event the

aforesaid issue is decided against plaintiff no.2 the petitioner will file an application under Order 6 Rule 17 seeking appropriate amendments, including the amendment sought in the schedule of amendment to the present application bearing no.3158 of 1991. Ms.Nichani, learned counsel for respondent no.1 has no objection for granting such liberty, however, she seeks liberty to respondent no.1 to oppose the application for amendment, if filed, after the aforesaid issue is decided. The writ petition is allowed with liberty to the parties as prayed for. All contentions are kept open. In view of the liberty granted to the parties the impugned order renders ineffective. The writ petition is disposed of.

(D.B.Bhosale, J.)